TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 17

THOMAS P. McMAHON, PETITIONER,

vs.

THE UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 13, 1951.

CERTIORARI GRANTED MAY 14, 1951.

SUPREME COURT OF THE UNITED STATES

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[fol. A]

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,259

THOMAS P. McMAHON, *Appellant*,

vs.

UNITED STATES OF AMERICA,
UNITED STATES MARITIME COMMISSION,
Appellees.

Appeal from the Order of Dismissal of the United States District Court for the Eastern District of Pennsylvania

(No. 19 of 1948, in Admiralty)

[fol. 1] IN UNITED STATES DISTRICT COURT

DOCKET ENTRIES

1948	
Jan. 22.	Libel filed.
Jan. 22.	Citation exit—returnable February 13, 1948.
Feb. 3.	Citation returned "with affidavit of service attached" and filed.
Mar. 22.	Respondent's motion to dismiss for lack of jurisdiction filed.
Mar. 22.	Order to place case on Argument List filed.
1950	
May 11.	Order to place case on Argument List filed.
May 29.	Hearing on motion to dismiss libel.
June 20.	Affidavit of Paul M. Goldstein filed.
July 13.	Opinion and Order Clary, J. granting respondent's motion to dismiss first cause of action as

to sub-paragraph a, b, c, d, e, f & N of paragraph 8 of libel: and granting motion to dismiss the second cause of action as to any claim predating Jan. 22, 1946 filed.

[fol. 2] July 17. Libellant's Notice of Appeal filed (cc to G. A. Gleeson; Krusen, Evans & Shaw).

July 17. Copy of Clerk's notice to U. S. Court of Appeals filed.

[fol. 3] In United States District Court

Libel in Personam

(Filed January 22, 1948)

To the Honorable, the Judges of Said Court:

The libel and complaint of Thomas P. McMahon against the United States of America and United States Maritime Commission, in the cause of action for damages, civil and maritime, to wit:

1. The respondent, United States of America, was and is a sovereign which has by law consented to be sued herein; and the respondent, United States Maritime Commission, was and is a governmental agency of the United States established by executive order of the President of the United States and is the successor to War Shipping Administration.

2. The United States of America, through the War Shipping Administration, was at all times mentioned herein the owner of the S. S. "John Sherman" which vessel at the time of the occurrence hereinafter related was operated for the account of the United States of America and the [fol. 4] War Shipping Administration, predecessor to the United States Maritime Commission as a merchant vessel, under an agreement made between the said War Shipping Administration and Alcoa Steamship Company, Inc.

3. Upon information and belief libellant avers that at all times hereinafter mentioned the said Alcoa Steamship Company, Inc. operated and controlled the S. S. "John Sherman" for and on behalf of the United States of America under an agreement of general agency in coastwise, intercoastal and foreign commerce.

4. Libellant is a resident of the City of Philadelphia,

State of Pennsylvania, and is a seaman in the United States Merchant Marine.

5. On or about the 13th day of November, 1945, libellant entered the employ of respondents as a member of the crew of the S. S. "John Sherman" in the capacity of oiler and at the rate of $155.00 per month, plus bonus, found and overtime on foreign voyages and return to the United States, for a term not to exceed twelve months.

6. In or about November, 1945 during the course of said [fol. 5] voyage, libellant became afflicted with a skin condition which became aggravated because of improper treatment rendered him by respondents.

7. In or about December, 1945, during the course of said articles, libellant, while on shore leave in France, was assaulted and sustained injury to his nose and shoulders.

8. Disregarding their duties in the premises, respondents by their agents, servants, workmen and employees were careless and negligent in:

(a) failing to provide a reasonable and safe place for libellant to perform his duties;

(b) failing to provide careful, competent, proper and skillful co-employees and superior officers;

(c) failing to fumigate or otherwise rid the ship of the source of the skin disorder;

(d) failing to provide for libellant's health and safety;

[fol. 6] (e) rendering libellant improper treatment;

(f) failing to take proper precautions and exercise proper supervision over the work in which libellant was engaged;

(g) failing to provide proper and adequate medical care and attention and maintenance for the alleviation and cure of libellant's injuries;

(h) failing to provide libellant with a safe and seaworthy vessel and safe appurtenances, and to keep the same in a safe and seaworthy condition.

9. During the entire period libellant was employed, he well and truly performed all his duties and was obedient to the lawful commands of the Master and other officers of the said vessel.

[fol. 7] 10. By reason of the negligence of the respondents and of the unseaworthiness of the vessel, libellant

became afflicted with a skin condition, irritation and disorder which became aggravated with the treatment rendered him. As a result of the assault libellant suffered a fracture of the nose, deflection of the nasal septum, nasal infection and bursitis of left shoulder. He suffered a shock to his nervous system. He suffered aches, pains and mental anguish and disability. He has been unable to assume his usual occupation in the past. Conditions of arthritis and otoselerosis have been aggravated. He has been advised and therefore avers that he may suffer disability in the future. He has in the past and may in the future be compelled to expend sums of money for medicines, medical care and treatment.

11. Libellant has made demand for the payment of damages but the same has been refused.

[fol. 8] SECOND CAUSE OF ACTION

Libellant realleges all the facts set forth in the first cause of action and in addition thereto respectfully represents, shows and alleges:

12. By reason of his service upon the vessel, libellant claims wages and maintenance and cure for the period of his disability in an amount which to your Honorable Court shall seem just and proper upon the trial of this cause.

13. Demand for wages and maintenance and cure has been made by libellant but the same has been refused.

14. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellant claims the sum of Fifteen Thousand ($15,000.00) Dollars from the respondents and prays that a citation in due form of law according to the laws and practice of this honorable court in the cause of admiralty and maritime jurisdiction may be issued, citing them to appear and answer all and singular the matters aforesaid [fol. 9] and that libellant may have judgment for the amount of his claim as aforesaid with interest and costs, with such other and further relief as the Court may deem just.

Stark and Goldstein, By (S.) Paul M. Goldstein,
Proctors for Libellant.

[fol. 10] *Duly sworn to by Paul M. Goldstein jurat omitted in printing.*

[fol. 11] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS FOR LACK OF JURISDICTION

(Filed March 22, 1948)

The Respondents, United States of America, and United States Maritime Commission, by their counsel, Gerald A. Gleeson, United States Attorney for the Eastern District of Pennsylvania, and Krusen, Evans and Shaw, both appearing specially and for the purpose of this motion only, move this Honorable Court to dismiss the Libel and Complaint of Thomas P. McMahon for the following reasons:

1. As will appear upon a reference to the Libel filed herein, two causes of action are alleged to have arisen, one in November and one in December of 1945. The Libel herein was filed January 22, 1948 and service was made upon the Attorney General, as provided by law, on January 26, 1948. The cause of action set forth in the Libel is subject to the provisions of the Suits in Admiralty Act of March 9, 1920; 46 U. S. C. A., Sections 741 to 745 inclusive and Act of March 24, 1943, 50 U. S. C. A. 1291. The limitation period provided by the Suits in Admiralty Act and incorporated [fol. 12] by reference into the Act of March 24, 1943, provides that suits thereunder "shall be brought within two years after the cause of action arises." As will appear by reference to the Libel, it was not filed within the said two year period after the alleged cause of action arose.

2. Under the provisions of the Act of March 24, 1943, 50 U. S. C. A. 1291, it is provided that as a condition precedent to bringing suit against the United States, a written claim must be filed and administratively disallowed; either by being refused or by the passage of sixty days from the date of filing without any action having been taken thereon. There is no showing upon the face of the Libel that this provision as to notice has been complied with and counsel for the Respondents is informed that, in fact, no such claim has ever been filed by the Libellant.

3. The Respondent, United States Maritime Commission,

is an agency created pursuant to the provisions of the Merchant Marine Act of 1936. It has never consented to be sued by statute or otherwise and it is immune from suit as an agency of the sovereign.

[fol. 13] Wherefore, the Respondent, United States Maritime Commission, prays that the Libel herein shall be dismissed as to it for lack of jurisdiction, and the Respondent, United States of America, moves this Honorable Court to dismiss the Libel for lack of jurisdiction as to it upon the basis of the averments in paragraphs (1) and (2) of this motion.

Gerald A. Gleeson, United States Attorney, Eastern District of Pennsylvania.
Krusen, Evans and Shaw, By.....,
Proctors for Respondents.

[fol. 14] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF PAUL M. GOLDSTEIN

(Filed June 20, 1950)

State of Pennsylvania)
County of Philadelphia) ss.

Paul M. Goldstein, being duly sworn according to law, deposes and says that he is a member of the firm of Stark and Goldstein, proctors for libellant in the above matter; that the attached photostat is a true and correct photostatic copy of letter from Alcoa Steamship Company, Inc., agent, to Messrs. Stark and Goldstein, dated April 17, 1946.

(S.) Paul M. Goldstein.

Sworn to and subscribed before me this 19th day of June, A. D. 1950. (S.) Berenice B. Bass (Seal), Notary Public. My Commission Expires end of next Session of Senate.

[fol. 15] ALCOA STEAMSHIP COMPANY, INC.
Seventeen Battery Place, New York 4, N. Y.
Cables Alcoaship—Tel. Whitehall 4-1500

April 17, 1946.

Messrs. Stark & Goldstein, 1103 North American Building, Broad and Sansom Streets, Philadelphia 7, Pa.

Gentlemen:

Subj.: SS John Sherman, Thomas P. McMahon.
(File No. 6273)

With reference to your letter of April 15, 1946, we wish to advise that we again very carefully reviewed our file with respect to the desertion charge and as a consequence we have decided to arrange for the cancellation of same. We wish to emphasize that our decision in this regard is prompted because of the imminent departure of Captain Dunlop and because of a desire to give your client the full benefit of all doubt and not because of any recognition of any responsibility to cancel the charge of desertion. We certainly are not yet convinced that Mr. McMahon was improperly classed a deserter.

A letter requesting the withdrawal of the desertion charge is this day being directed to the U. S. Shipping [fol.16] Commissioner, 42 Broadway, New York City, and hereafter it will be necessary that you communicate with him regarding the payment of earned wages.

As previously advised, we do not feel that Mr. McMahon is in a position to assert a valid claim for benefits under the maritime doctrine; this in view of the fact his pre-existent nasal condition was not aggravated as a consequence of his employment aboard the SS John Sherman nor did it any time during the voyage render him unfit for duty. However, for our further consideration, please submit the information and reports requested in the concluding paragraph of our letter of April 12, 1946.

Very truly yours,
United States of America
War Shipping Administration
By Alcoa Steamship Company, Inc., Agent.
(S.) H. A. Dawson, cmc Insurance Department.

HAD:cmc

[fol.17] IN UNITED STATES DISTRICT COURT

OPINION OF THE COURT

(Filed July 13, 1950)

July 12, 1950.

Clary, J.

In this Admiralty action, two causes of action are asserted, one for damages and the other for maintenance and cure. In the cause of action for damages, two accidents are involved; one in November 1945 and the other in December 1945. The libel was filed January 22, 1948, more than two years after the occurrence of the events alleged as the basis for the causes of action set forth in the libel. Respondent has moved to dismiss the libel as to both causes of action on the ground that the libel was not timely filed under the provisions of the Suits in Admiralty Act of March 9, 1920, 46 U. S. C. A., Sec. 741, et seq., and the Clarification Act of March 4, 1943, 50 U. S. C. A., Sec. 1291.

The Suits in Admiralty Act provides that suits thereunder "shall be brought within two years after the cause of action arises". The Clarification Act gives seamen employed on United States or foreign flag vessels as employees [fol.18] of the United States through the War Shipping Administration the same rights with respect to certain claims as are enjoyed by seamen employed on privately owned and operated American vessels. Under the Clarification Act such seamen employed by the United States are given the right to sue pursuant to the provisions of the Suits in Admiralty Act. The two-year period of limitations of the Suits in Admiralty Act therefore obtains in suits brought under the permission granted in the Clarification Act. The difficulty arises in this case in determining the effect of the provisions in the Clarification Act that "——Any claim (for damages and wages)——shall, if administratively disallowed in whole or in part, be enforced pursuant to the provisions of the Suits in Admiralty Act ——, notwithstanding the vessel on which the seaman is employed is not a merchant vessel within the meaning of such Act. ——".

The question, therefore, is: When does the "cause of action" within the meaning of the Suits in Admiralty Act

arise as it applies to an action instituted under the authority of the Clarification Act? Libellant argues that the [fol. 19] "cause of action" arises only upon administrative disallowance of the claim and that therefore the two-year period of limitations should not commence in this case until the date of the administrative disallowance of the claim, April 17, 1947, as appears by affidavit of the proctors for the libellant. He argues that such disallowance is a condition precedent to the right to sue the United States and, therefore, the "cause of action" does not arise until that condition has been complied with. In support of his position libellant cites *Thurston* v. *United States*, 179 F. 2nd 514, C. A. 9 (1950). In that case, the accident occurred on July 10, 1946, and the claim was filed on April 16, 1948. No action was taken on the claim and under War Shipping Administration regulations, after sixty (60) days it was presumptively disallowed. The libel was filed August 4, 1948, or two years and twenty-five days after the accident. The Court of Appeals for the Ninth Circuit, Dennan, C. J., held that it was timely filed. I am impressed by the reasoning in that Opinion but the Court of Appeals for this Circuit has indicated a contrary result by an expression in the clearest language in *Hodinciuc* v. *United States*, 175 F. 2nd, 479 (1949). In that case, it was held that the seaman [fol. 20] had never perfected his statutory right to sue the United States because he had failed to file his claim before instituting suit. The point before me, therefore, was not considered, but in the Opinion, Goodrich, J., on behalf of the Court, stated "—— The seaman has two years from the time of his *injury* to start suit. Within that two-year period he must file a claim with the Administrator, and if it is disallowed, the seaman may sue.——". (Emphasis supplied) The language is clear and unequivocal. The seaman must institute suit within two years from the time of his *injury*. Though the statement is dictum, I feel bound by the expression. If the statement was made without consideration of the implications in the exact situation before me, any modification thereof is the province of the Court of Appeals.

The libel, therefore, must be dismissed as to the first cause of action except insofar as it alleges negligence in failing to provide proper and adequate medical care and attention and maintenance for the alleviation and cure of

libellant's injuries. The duty to provide maintenance and cure is a continuing one and I cannot say as a matter of [fol. 21] law that it could not have continued to a time within the two-year period of limitations. *Christo* v. *United States*, 83 Fed. Supp. 960; of *Ran* v. *Atlantic Refining Company*, 87 Fed. Supp. 853.

As to the second cause of action, for maintenance and cure, the liability for maintenance and cure is a continuing one and may be asserted for the two-year period immediately preceding the filing of the libel. *Kruhmin* v. *United States*, 81 Fed. Supp. 689. The motion to dismiss the cause of action for maintenance and cure is therefore granted only as to any claim preceding January 22, 1946. As to the claim for maintenance and cure from and after January 22, 1946, the motion will be dismissed.

[fol. 22] IN UNITED STATES DISTRICT COURT

ORDER DISMISSING DESIGNATED PORTIONS OF THE LIBEL

(Filed July 13, 1950)

And now, to wit, this 12th day of July, A. D. 1950, for the reasons set forth in the foregoing Opinion, it is

Ordered, adjudged and decreed that respondent's motion to dismiss the first cause of action be and it is hereby granted insofar as it relates to sub-paragraphs (a), (b), (c), (d), (e), (f) and (h) of paragraph 8 of the libel.

It is further ordered, adjudged and decreed that the respondent's motion to dismiss the second cause of action, for maintenance and cure, be and it is hereby granted as to any claim for the period predating January 22, 1946; as to the claim for the period from and after January 22, 1946, the motion is hereby dismissed.

By the Court: (S.) Thomas J. Clary. J.

[fol. 23] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL TO THE COURT OF APPEALS UNDER RULE 73(b), WITHOUT PREPAYMENT OF FEES OR COSTS OR GIVING SECURITY, UNDER 28 U. S. C., SECTION 1916, AS REVISED JUNE 25, 1948.

(Filed July 17, 1950)

Notice is hereby given that Thomas P. McMahon, the libellant above named, hereby appeals to the United States Court of Appeals for the Third Circuit from the Order dated July 12, 1950, and filed July 13, 1950, dismissing the first cause of action insofar as it relates to subparagraphs (a), (b), (c), (d), (e), (f) and (h) of paragraph 8 of the Libel and in dismissing the second cause of action, for maintenance and cure, as to any claim for the period predating January 22, 1946, without prepayment of fees or costs or furnishing security thereof.

Stark and Goldstein, By (S.) Paul M. Goldstein, Proctors for Appellant, 1201 Chestnut Street, Philadelphia 7, Pennsylvania.

[fol. 24] IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[Title Omitted]

PETITION FOR LEAVE TO PROSECUTE APPEAL WITHOUT PREPAYMENT OF FEES OR COSTS OR GIVING SECURITY THEREFOR, AND FOR LEAVE TO SUBMIT TYPEWRITTEN BRIEF AND APPENDIX.

(Filed July 21, 1950)

To The Honorable, The Judges of said Court:

The petition of Thomas P. McMahon by Stark and Goldstein, his proctors, respectfully represents:

1. He is the libellant in a certain admiralty action instituted in the United States District Court for the Eastern District of Pennsylvania for damages, for wages, and for maintenance and cure, against the above named respondents, therein designated as No. 19 of 1948, In Admiralty.

2. Libellant is a seaman in the United States Merchant Marine and was a member of the crew of respondents' vessel, the Steamship "John Sherman", in the course of which service he sustained disability.

3. The Libel in said cause was filed by the seaman-libellant without prepayment of fees or costs or giving security therefor, pursuant to 28 U. S. C. A. Section 1916.

(File Endorsement Omitted)

[fol. 25] 4. By Order dated July 12, 1950 and filed July 13, 1950, the District Court, on application of Respondent United States of America, dismissed designated portions of libellant's claims for damages and for maintenance and cure.

5. On July 17, 1950 seaman-libellant filed in said District Court his Notice of Appeal to this Court from its said Order entered July 13, 1950, which appeal libellant requests leave of your Honorable Court to prosecute without prepayment fees or costs or giving security therefor, pursuant to the provisions of Title 28, U. S. C. A., Section 1916.

6. Seaman-libellant further requests leave of your Honorable Court to submit briefs and appendixes in typewritten form.

And your petitioner will ever pray, etc.

Stark and Goldstein, By (S) Paul M. Goldstein,
Proctors for Appellant.

[fol. 26] *Duly sworn to by Paul M. Goldstein. Jurat omitted in printing.*

[fol. 27] UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

[Title Omitted]

ORDER GRANTING APPELLANT LEAVE TO DOCKET APPEAL WITHOUT PREPAYMENT OF COSTS OR GIVING SECURITY ETC.

(Filed July 21, 1950)

Upon consideration of the petition of appellant,

It is ordered that the appeal in the above-entitled case be docketed in this court without prepayment of costs or giving security therefor;

And it is further ordered that appellant be, and he is hereby granted leave to file typewritten briefs and appendices in conformity with Rule 24 (8) of this court.

Maris, Circuit Judge

July 21, 1950

[fol. 28-29] Stipulations re filing brief omitted in printing.

[fol. 30] UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10,259

THOMAS P. McMAHON, *Appellant*,

v.

UNITED STATES OF AMERICA,
UNITED STATES MARITIME COMMISSION

Appeal from the United States District Court for the Eastern District of Pennsylvania

Argued November 17, 1950

Before MARIS, McLAUGHLIN and STALEY, *Circuit Judges*.

OPINION OF THE COURT—Filed December 28, 1950

By MARIS, *Circuit Judge*.

This is an appeal from the judgment of the United States District Court for the Eastern District of Pennsylvania dismissing a seaman's suit in admiralty containing two counts. The first count set up a cause of action based on negligence and unseaworthiness while the second count sought maintenance and cure. The occurrences upon which both counts are predicated took place in November and December, 1945. The libel was filed January 22, 1948. The [fol. 31] first count was dismissed except insofar as it asserted negligent failure to provide medical care and maintenance and the second count was dismissed except as to maintenance and cure claimed for the period of two years immediately preceding the filing of the libel. The

suit was brought against the United States under the Suits in Admiralty Act pursuant to the Clarification Act. The action of the district court was based upon its conclusion that suit upon the subject matter of the dismissed counts was barred by the two years limitation contained in the Suits in Admiralty Act. 91 F. Supp. 593. The correctness of that conclusion is the sole question presented on this appeal.

Section 1(a) of the Clarification Act[1] gives to seamen employed by the United States on Government owned vessels the same rights against the United States with respect to "death, injuries, illness, maintenance and cure, loss of effects, detention, or repatriation" and "collection of wages and bonuses and making of allotments" which seamen employed on privately owned and operated American vessels have against the owners of those vessels. The act provides that "Any claim" of the kinds just referred to shall, "if administratively disallowed in whole or in part, be enforced pursuant to the provisions of the Suits in Admiralty Act." The Clarification Act further provides that "the term 'administratively disallowed' means a denial of a written claim in accordance with rules or regulations prescribed by the Administrator, War Shipping Administration." When we turn to the Suits in Admiralty Act we find that Section 5 imposes the following limitation upon the bringing of suit:[2]

> "That suits as herein authorized may be brought only on causes of action arising since April 6, 1917, provided that suits based on causes of action arising [fol. 32] prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; and all other suits hereunder shall be brought within two years after the cause of action arises."

The question for decision is whether the libelant's causes of action under the Clarification Act for personal injuries and maintenance and cure, which are here sought to be enforced by suit against the United States under the Suits in Admiralty Act, arose, within the meaning of Section 5

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[1] Act of March 24, 1943, 57 Stat. 45, c. 26, 50 U. S. C. A. Appendix § 1291(a).

[2] Act of March 9, 1920, c. 95, 41 Stat. 526, 46 U. S. C. A. § 745.

of that act, at the time when the injuries complained of occurred, or at the time when the seaman's claim with respect thereto was administratively disallowed pursuant to the Clarification Act. If the former is true more than two years elapsed between the time the causes of action arose and the time the suit was brought and, therefore, the suit was rightly held to be barred by the limitation contained in Section 5 of the act. If on the other hand the causes of action did not arise within the meaning of Section 5 of the Suits in Admiralty Act until after the administrative disallowance of the libelant's claims under the Clarification Act the suit was brought within the two years period and was consequently timely and should not have been dismissed.

We are satisfied that the district court was right in holding that the libelant's causes of action arose in November and December, 1945, when he sustained his injuries, and that they were, therefore, barred by the statute of limitations. In *Rodinciuc* v. *United States*, 1949, 175 F. 2d 479, 481, we said with respect to the question now before us: "The seaman has two years from the time of his injury to start suit. Within that two-year period he must file a claim with the Administrator, and if it is disallowed, the seaman may sue." We adhere to the view expressed in that opinion.

The libelant strongly urges that in the light of the requirement of the Clarification Act for the presentation and administrative disallowance of a seaman's claim before [fol. 33] suit may be brought upon it Section 5 of the Suits in Admiralty Act must be construed to mean that the seaman's cause of action does not arise until after such administrative disallowance has taken place and may, therefore, be prosecuted by suit if brought within two years after the latter event. He relies upon the decision of the Court of Appeals for the Ninth Circuit in *Thurston* v. *United States*, 1950, 179 F. 2d 514, which so holds. The decision in the *Thurston* case is placed largely upon the ground that legislation such as we are here considering, which is for the benefit of seamen, must be construed strongly in their favor. Proceeding upon this premise the court construed the phrase "cause of action" as used in the Suits in Admiralty Act as having a different meaning from the word "claim" as used in the Clarification Act, the "claim" being held to be that which accrues to the seaman when he is injured and

the "cause of action" being merely his right to bring a suit after administrative disallowance of his "claim".

We are unable to accept the view taken by our brethren of the Ninth Circuit because we think that it fails to give appropriate effect to considerations which we regard as controlling. It is, of course, true that legislation for the benefit of seamen is to be construed liberally in their favor. It is equally true, however, that both the Suits in Admiralty Act and the Clarification Act are statutes which waive the sovereign immunity of the United States from suit and as such, under an equally well accepted canon of construction, the extent of the right to sue which they confer must be construed strictly in favor of the sovereign.[3] Since we

Indeed, so strictly is this canon applied that limitations contained in such acts cannot be lengthened by waiver or estoppel but are to be regarded as qualifying and limiting the right and not merely the remedy. *Finn* v. *United States*, 1887, 123 U. S. 227; *Munro* v. *United States*, 1938, 303 U. S. 36; *Kruhmin* v. *United States*, 3 Cir. 1949, 177 F. 2d 906.

Moreover this canon has been applied to one of these very statutes, the Suits in Admiralty Act. *Blamberg Bros.* v. *United States*, 1923, 260 U. S. 452; *Eastern Transp. Co.* v. *United States*, 1927, 272 U. S. 658, 686.

[fol. 34] thus have two accepted canons, one which calls for a liberal construction of the statutes and the other which calls for a strict construction, it necessarily becomes our duty to give the legislation a reasonable construction which will accord with its language without throwing any weights on either side of the scale.

Considering the legislation in this light we observe that the Suits in Admiralty Act, Section 5 of which contains the limitation in question, was enacted in 1920, 23 years before the passage of the Clarification Act. Obviously Congress could not have had in mind at that time the procedure for the administrative consideration and disallowance of a claim which was not prescribed by it until nearly a quarter of a century later. Moreover we observe that Section 5 of the Suits in Admiralty Act expressly refers to "suits based on causes of action arising prior to the taking of

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[3] *United States* v. *Michel*, 1931, 282, U. S. 656; *United States* v. *Shaw*, 1940, 309 U. S. 495, 500-501; *United States* v. *Sherwood*, 1941, 312 U. S. 584, 586-587.

effect of this Act." Since suits in personam against the United States upon the causes of action here referred to were not authorized until the passage of the Suits in Admiralty Act the quoted language necessarily refers to "causes of action arising" before the time when suits could be brought on them. Thus the express language of Section 5 itself negates the libelant's proposition that a "cause of action" as the phrase is used in that section refers only to a claim upon which suit may presently be brought and that it, therefore, "arises" only when the right to bring suit thereon has accrued.

It thus appears that the libelant fails to make a distinction between a cause of action and the right of action thereon. There is, however, a recognized distinction between the two[4] which is controlling here. A cause of action is a legal wrong, the thing which becomes a ground for suit.[5] Here the libelant's causes of action were the legal [fol. 35] wrongs which he had allegedly suffered at the hands of the United States in connection with his injuries. These causes of action arose at the moment of injury and he was entitled to enforce them by claim under the administrative procedure provided for by the Clarification Act, and, if that claim was disallowed, by suit under the Suits in Admiralty Act. A right of action, on the other hand, is a right presently to enforce a cause of action by suit. Under the terms of the Clarification Act, however, the libelant's right of action did not arise unless and until he exhausted his administrative remedy. Until then he was precluded from instituting suit upon his causes of action. The making of an administrative claim was nonetheless a step in the enforcement of those causes of action which had been vested in him from the time of injury.

We accordingly conclude that the libelant's causes of action arose in November and December, 1945 when he was injured and under the express terms of Section 5 of the Suits in Admiralty Act were not enforceable by a suit brought more than two years thereafter. We are the more persuaded of the correctness of this conclusion when we

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[4] *Reading Co.* v. *Koons*, 1926, 271 U. S. 58; *Hudson Motor Car Co.* v. *Hertz*, 6 Cir. 1941, 121 F. 2d 326, 331, cert. den. 314 U. S. 696; 1 Am. Jur., Actions, § 3.

[5] *Baltimore S.S. Co.* v. *Phillips*, 1927, 274 U. S. 316, 321.

consider that the construction of the statutes for which the libelant contends would as a practical matter emasculate the limitation of the Suits in Admiralty Act so far as claims under the Clarification Act are concerned. For under the libelant's view a claimant merely by deferring the filing of his administrative claim could retain his right to bring suit against the United States for as many years as he thought advantageous to himself. This would necessarily follow from the fact that the Clarification Act contains no limitation upon the time within which claims may be presented for administrative consideration. We cannot believe that Congress intended any such result as this when, by enacting the Suits in Admiralty Act and the Clarification Act, it waived the immunity of the United States. Not having included a limitation in the latter act it must have [fol. 36] intended that the existing limitation of the Suits in Admiralty Act should apply.

The judgment of the district court will be affirmed.

[fol. 37] UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10,259

THOMAS P. McMAHON, *Appellant,*

vs.

UNITED STATES OF AMERICA,
UNITED STATES MARITIME COMMISSION

On Appeal from the United States District Court
For the Eastern District of Pennsylvania

Present: MARIS, McLAUGHLIN and STALEY, *Circuit Judges.*

JUDGMENT FILED DECEMBER 28, 1950

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said

District Court in this case be, and the same is hereby affirmed.

[File endorsement omitted]

[fol. 38] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 39] SUPREME COURT OF THE UNITED STATES

No. 606

October Term, 1950

Order allowing certiorari. Filed May 14, 1951.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.